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Vol. II

TRANSCRIPT OF RECORDS

(Pages 27 & 28)

Supreme Court of the United States

OFFICE FILE, 1900

No. 306

U. S. v. RAYMOND, PETITIONER

U. S. v. RAYMOND, PETITIONER

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U. S. v. RAYMOND, PETITIONER

No. 9925

United States
Circuit Court of Appeals
For the Ninth Circuit.

J. R. MASON,

Appellant,

vs.

PARADISE IRRIGATION DISTRICT,

Appellee.

SUPPLEMENTAL
Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Northern Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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At a Stated Term, to wit: The October Term, 1941, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Thursday the fourteenth day of May in the year of our Lord one thousand nine hundred and forty-two.

Present:

Honorable Francis A. Garrecht, Circuit Judge,
Presiding,

Honorable Clifton Mathews, Circuit Judge,

Honorable Albert Lee Stephens, Circuit Judge.

No. 9925

J. R. MASON,

Appellant,

vs.

PARADISE IRRIGATION DISTRICT,

Appellee.

ORDER REMANDING CAUSE FOR
FINDINGS, ETC.

Upon appeal from the District Court of the United States for the Northern District of California, Northern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of California, Northern Division, and was duly submitted:

On Consideration Whereof, It is now hereby ordered by this Court that this cause be, and hereby

is remanded to the said District Court with directions to make specific findings bearing on the question of the maximum amount that the District is reasonably able to pay its bondholders in the circumstances, either with or without the taking of additional evidence as said District Court in its discretion may determine. See *Lorber v. Vista Irrigation District*, 127 Fed. (2d) 628 (CCA 9 Apr. 16, 1942) *Consolidated Rock Products Co. et al. vs. DuBois*, 312 U.S. 510, 65 Sup. Ct. 675. The District Court shall further clarify its findings on the question whether the plan of composition provides for deductions from the amount to be paid for coupons which have been voluntarily paid by the Irrigation District.

It Is Further Ordered that the submission of said cause be, and hereby is set aside. -----

(Garrecht, C. J., does not concur.)

In the District Court of the United States for the
Northern District of California, Northern
Division

Federal Court No. 7703

In the Matter of

PARADISE IRRIGATION DISTRICT

NOTICE OF MOTION TO SET ASIDE ORAL
STIPULATION, AND TO SET DATE FOR
HEARING

To J. R. Mason, Respondent, and to W. Coburn
Cook, Attorney for Respondent.

You and Each of You Will Please Take Notice

that the Paradise Irrigation District, petitioner in the above entitled matter, will upon the 1st day of February, 1943, at the hour of ten o'clock A.M., in the Courtroom of the above entitled Court, situated in the Federal Building located in the City of Sacramento, County of Sacramento, State of California, move the above entitled Court as follows, to wit:

1. To set aside an oral stipulation entered into by the parties in open Court on Wednesday, the 14th day of October 1942, a copy of which oral stipulation is attached hereto, and marked Exhibit "A", and made a part hereof.

2. In the event the Court orders the setting aside of the stipulation referred to in the preceding paragraph, for [1*] an order of the Court setting the time and place for the taking of testimony in the above matter bearing on the question of the maximum amount that the district is reasonably able to pay its bondholders in the circumstances, and what is the procedure in respect to interest coupons of the District maturing after July 1, 1934, which were paid by the District to respondent J. R. Mason. for the purpose of the above Court making specific findings upon such question, as required in that certain order made by the United States Circuit Court of Appeals for the Ninth Circuit in the appeal pending before it, entitled "J. R. Mason, Appellant, v. Paradise Irrigation District, Appellee", and which was an appeal from the interlocutory judgment rendered and entered

*Page numbering appearing at foot of page of original certified Transcript.

therein, which said appeal to said Circuit Court was No. 9925, and which said order remanding the cause to the above Court for such findings was made on the 14th day of May, 1942, and in which the said United States Circuit Court of Appeals remanded the above entitled cause to the above District Court for the making of the specific findings as to the maximum amount that the district is reasonably able to pay its bondholders in the circumstances, and what is the procedure in respect to interest coupons of the District maturing after July 1, 1934, which were paid by the District to respondent J. R. Mason.

The ground of said motion will be that said oral stipulation was entered by the parties in open Court subject however to later being reduced to writing and executed by the parties; that it was reduced to writing and executed by the respondent through his counsel, but was not executed by the District, or any one in its behalf, for the reason that immediately following the stipulation, the proposed terms of said stipulation were submitted to the Reconstruction Finance Corporation in Washington, D. C., which corporation is the [2] one advancing to the District the money with which to effect the proposed settlement referred to in these proceedings and, in said stipulation, and the said Reconstruction Finance Corporation upon being advised of the terms of said stipulation, advised the petitioner it would not consent thereto, upon the ground that the effect of said stipulation was to

change the terms of the proposed composition, and unless the stipulation was withdrawn and declared null and void and of *not* effect, it would not consent to the composition plan entailed therein as so changed, and would withdraw its consent thereto and would not advance to the District the required money to effect the same. That these proceedings were initiated by the District under public No. 302-75, Chapter 657—First Session, approved August 16, 1934, which act is an amendment to "an act to establish a uniform system of bankruptcy throughout the United States" as approved July 1, 1898. That under the terms and provisions of said act, before a composition may be effected, holders of $\frac{2}{3}$ or $66\frac{2}{3}$ per cent of the outstanding bonded indebtedness of the District must consent thereto. That the Reconstruction Finance Corporation is the owner of over 92 per cent of the petitioner's bonded indebtedness involved in these proceedings, and has consented to the proposed plan of composition as set out in the petition on file, but if said corporation refuses its consent, which it has done, to the change in the plan as set forth in the stipulation hereby sought to be set aside, no decree approving the composition may be validly entered. That unless said stipulation be set aside by order of this Court, the entire composition program of petitioner will be jeopardized, and all the proceed-

ings taken by it to effect such composition will be fruitless and of no effect.

Said motion will be based upon this written notice, [3] upon the oral stipulation entered in open Court upon Wednesday, October 14, 1942, a copy of which is hereto attached, and marked Exhibit "A", and upon the affidavit of H. S. Clewett, one of counsel for petitioner, which is attached hereto and is marked Exhibit "B", and is hereby made a part hereof.

Dated: This 11th day of January, 1943.

JEROME D. PETERS

H. S. CLEWETT

Attorneys for Petitioner

Paradise Irrigation District

EXHIBIT "A"

At a stated term of the Northern Division of the United States District Court of the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Wednesday, the 14th day of October, in the year of our Lord one thousand nine hundred and 42.

Present: The Honorable Martin I. Welsh,
District Judge.

No. 7703

In the Matter of

PARADISE IRRIGATION DISTRICT,

Debtor.

This case came on regularly this day for the hearing of testimony to enable the Court to make findings of fact and conclusions of law. Jerome D. Peters, Esq., and H. S. Clewett, Esq., were present for and on behalf of the debtor. W. Coburn Cook, Esq., was present for and on behalf of J. R. Mason, the respondent. Mr. Peters and Mr. Cook stipulated that the plan of composition may be interpreted as approved by Mr. Mason, upon certain conditions; First that there be no deduction from Mr. Mason's pro-rata share due him under the terms of the plan of composition and that he retain the \$3,000 heretofore paid him on account of interest due on coupons. It is further Ordered that Mr. Mason be paid an additional sum of \$1,000

from District funds on account of expenses incurred on the appeal heretofore taken. It is further Ordered that Mr. Cook will dismiss the appeal now pending upon fulfillment of the conditions. It is further Ordered that Mr. Peters prepare findings of fact and conclusions of law and a judgment and submit the same to the Court.

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest:

(Seal) C. W. CALBREATH,

Clerk, District Court of the U. S., Northern District of California.

By F. M. LAMPERT
Deputy Clerk

EXHIBIT "B"

In the District Court of the United States for the Northern District of California, Northern Division

Federal Court No. 7703

In the Matter of

PARADISE IRRIGATION DISTRICT.

AFFIDAVIT OF H. S. CLEWETT

State of California,
County of Butte—ss.

H. S. Clewett, being first duly sworn, deposes and says: That he is a citizen of the State of Cali-

fornia, United States of America, is over the age of twenty-one years, and is a duly licensed and practising attorney, at law, with his office in Paradise, Butte County, California, and that he is one of counsel for petitioner Paradise Irrigation District in the above matter. That Jerome D. Peters, of Chico, Butte County, California, is co-attorney for said petitioner with affiant.

That at the time of the hearing of the above matter, namely October 13, and 14, 1942, before the above entitled Court in Sacramento, California, efforts were made to compromise the matter. The first offer of the respondent J. R. Mason moving toward a compromise was not accepted by the District because of the fact that affiant and his co-counsel would not approve the offer until the consent of the Reconstruction Finance Corporation was obtained for the reason that such corporation owns over 92 per cent of petitioner's bonded indebtedness involved herein, and under the act under which the proceedings were brought, a jurisdictional fact before a decree could be entered approving the compromise, was that 66 2/3 per cent of the owners of such indebtedness must consent in writing to the plan:

After the first offer of respondent was rejected, another offer was made, which seemed not to involve the Reconstruction Finance Corporation, inasmuch as certain monies were to be paid the respondent Mason, but they were to come from the

finances of the District as distinguished from finances to be advanced the District by the Reconstruction Finance Corporation, and it was assumed by counsel that the Reconstruction Finance Corporation would have no objection thereto. It was impossible to get a telephone line through to the Reconstruction Finance Corporation in Washington, D. C. and affiant and members of the Board of the District and co-attorney Jerome D. Peters thought that the plan offered was satisfactory, and that the Reconstruction Finance Corporation would not object thereto. Thereupon counsel for respective parties informed the Court that they had reached an agreement which was stated orally in Court, and which was agreed to be reduced to writing and ultimately executed by the parties. The oral stipulation is attached to these papers and is marked Exhibit "A". That such oral agreement was reduced to writing, but never executed by petitioner or anyone in its behalf.

That subsequently affiant informed the Reconstruction Finance Corporation of the agreement reached, and subsequently was advised that the Reconstruction Finance Corporation would not approve the agreement, for the reason that under it the respondent J. R. Mason received advantages and monies that the original bondholders who accepted the composition did not receive, and affiant received a letter from such corporation to that effect, and stating that the plan under the agree-

ment reached under said oral stipulation was a different plan from the one it consented to when the proceedings were initiated, and that the law requires such corporations' consent to any modification of the original plan, and it would not give it, and if steps were not taken to have such stipulation set aside, it would withdraw its consent; this will jeopardize the whole composition plan of the District, for the Reconstruction Finance Corporation agreed only to advance the monies to the District to effect a composition under the original plan, and it will not do so under the changed plan, whereby the respondent Mason receives such additional advantages and monies.

This affidavit is made to support the motion which it accompanies and to set aside such stipulation and to set a time and place for the hearing of the matter on its merits.

That it is of ultimate importance to the District and its members that the composition be effected; that the future of the District depends upon such composition, and that plans of the District for the future will be entirely futile if the plan of composition whereby the District is to pay some 52 cents upon each dollar of indebtedness be not consummated.

H. S. CLEWETT

Subscribed and sworn to before me this 11th day of January, 1943.

RUTH GRINNELL

Notary Public in and for the County of Butte,
State of California.

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest:

[Seal]

C. W. CALBREATH,

Clerk, District Court of the
U. S. Northern District of
California.

By F. M. LAMPERT
Deputy Clerk

[Endorsed]: Filed Jan. 13, 1943. Walter B.
Maling, Clerk. [4]

[Title of District Court and Cause.]

**OBJECTION TO MOTION TO SET ASIDE
ORAL STIPULATION AND TO SET DATE
FOR HEARING**

Comes now J. R. Mason, respondent, by and through his counsel, W. Coburn Cook, and objects to the motion to set aside oral stipulation and set date for hearing calendared to be heard February 1, 1943, and in opposition thereto states:

I.

That said stipulation, made in open court October 14, 1942, was made freely and openly and without duress or fraud, and that the same does not provide that it should be reduced to writing, and that thereupon the court caused to be entered in

the matter, its order that the stipulation should be carried out, and that counsel for the petitioner should prepare findings and conclusions of law and a judgment.

II.

That the said counsel did prepare a written stipulation however, and a proposed set of findings, conclusions and [5] judgment, and submitted the same to W. Coburn Cook, counsel for respondent, who has approved the same, and that the said parties are agreed upon the form thereof, but that in fact the making of the written stipulation is not essential, nor was it provided in the oral stipulation.

III.

That as a matter of fact and of justice, this court upon an extended hearing would undoubtedly have provided that no deductions should be made for the \$3,000 paid J. R. Mason on account of interest, and that further the original composition plan provided for the payment of interest to the depositing bond holders from approximately July 1, 1934 until such time as they should deposit their bonds, the interest to be at four per cent (4%) on the composition figure, and such interest if allowed to J. R. Mason would exceed the sum of Four Thousand Dollars (\$4000.00), and that viewed in that light, therefore, even if a deduction were to be made for the \$3,000, it would appear that Mr. Mason would in all fairness be entitled to approximately Four Thousand Five Hundred Dollars (\$4,500.00) by way of such interest; that if the court determines

that he is entitled to claim the full composition figure without deduction of the \$3,000, he may yet be entitled to receive the Four Thousand Five Hundred Dollars (\$4,500.00) interest in addition; that inasmuch as he has abandoned his appeal to the Circuit Court of Appeals, it was not improper that this court should determine that in lieu of his expense incurred therein, he should be allowed his expenses, costs and disbursements, which were roughly estimated at One Thousand Dollars (\$1000.00).

IV.

That the proposed judgment herein is not an amendment of the plan of composition; that it would not be legally [6] possible for the Reconstruction Finance Corporation to withdraw its consent and furthermore, that even if it were an amendment of the plan of composition, the court has authority under Sections 81-83 of the bankruptcy act to make such amendment of a plan of composition as it may consider proper, and which do not adversely effect the consenting creditors, without any notice whatever to such creditors. See Title 11, Section 403 (e).

V.

It is respectfully suggested that the court has no authority to set aside the stipulation but only has authority to withdraw its approval, as to which it is respectfully represented that the court should decline to act.

VI.

Finally, it is not true that the composition plan of petitioner would be jeopardized by the entry of a decree, because obviously the Reconstruction Finance Corporation will be bound by the judgment entered and its only remedy would be by appeal.

Dated this 29th day of January, 1943.

W. COBURN COOK

Attorney for J. R. Mason

Subscribed and sworn to before me this 29th day of January, 1943.

GILBERT MOODY

Notary Public in and for the County of Stanislaus,
State of California

[Endorsed]: Filed Jan. 30, 1943. Walter B. Maling, Clerk. [7]

[Title of District Court and Cause.]

AMENDMENT TO ANSWER OF J. R. MASON

Comes now J. R. Mason, creditor herein, and amends his answer herein by adding Paragraph No. VIII, as follows:

The said J. R. Mason alleges that said plan of readjustment and composition is not fair, equitable, nor for the best interests of the creditors of the district for the reason that said plan of composition and readjustment offers the Reconstruction Finance Corporation, a creditor of said District, refunding bonds in exchange for its claim, but compels J. R.

Mason, holding the same character of claim to accept cash only, and does not offer the said J. R. Mason said refunding bonds in exchange for his claim, and the said plan further allows interest upon the claim of the Reconstruction Finance Corporation from approximately July 1, 1934, at four per cent per annum on the composition price based upon the principal amount of bonds held by the said Reconstruction Finance Corporation, but refuses like interest to the said J. R. Mason [8] and that said plan of composition is unfair and unjust in this respect in the same manner as the plan of composition was unfair in the case of *State of Texas v. Tabasco Consolidated Independent School District*, 133 Fed (2) 196.

Wherefore, J. R. Mason further prays that unless the plan of composition be amended to allow him to receive refunding bonds, the same as the Reconstruction Finance Corporation, that the petition be dismissed; the said J. R. Mason does not hereby consent to the jurisdiction of the court, nor waive any objections heretofore made.

Dated this 17th day of April, 1943.

W. COBURN COOK

Attorney for J. R. Mason

[Endorsed]: Filed Apr. 19, 1943. Walter B. Maling, Clerk. [9]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Tuesday the 14th day of October, in the year of our Lord one thousand nine hundred and forty-two.

Present: The Honorable Martin I. Welsh, District Judge

No. 7703

[Title of Cause.]

This case came on regularly this day for the hearing of testimony to enable the Court to make findings of fact and conclusions of law. Jerome D. Peters, Esq., and H. S. Clewett, Esq., were present for and on behalf of the debtor. W. C. Curn Cook, Esq., was present for and on behalf of J. R. Mason, the respondent. Mr. Peters and Mr. Cook stipulated that the plan of composition may be interpreted as approved by Mr. Mason upon certain conditions; First that there be no deduction from Mr. Mason's pro-rata share due him under the terms of the plan of composition and that he retain the \$3,000. heretofore paid him on account of interest due on coupons. It is further Ordered that Mr. Mason be paid an additional sum of \$1,000.00 from District Funds on account of expenses incurred on the appeal heretofore taken. It is further Ordered that Mr. Cook will dismiss the appeal now pending upon fulfillment of the conditions. It is further Ordered that Mr. Peters prepare findings of fact and conclusions of law and a judgment and submit same to the Court. [10]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Thursday, the 25th day of March, in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Martin I. Welsh, District Judge

No. 7703

[Title of Cause.]

The motion to set aside oral stipulation and to set date for hearing having been heretofore heard and submitted, being now fully considered, it is Ordered that the motion to set aside oral stipulation be and the same is hereby Granted, and said case is hereby placed on the calendar for Monday, April 12, 1943, to be set for hearing. [11]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Friday the 18th day of June, in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Martin I. Welsh, District Judge

No. 7703

[Title of Cause.]

The motion to strike amendment to answer, and the motion to amend plan of composition to enable

J. R. Mason and R.F.C. to accept refunding bonds having been heretofore heard and submitted, being now fully considered, it is Ordered that the motion to strike amendment to answer be and the same is hereby Granted. It is further Ordered that the motion to amend the plan of composition to enable J. R. Mason and R.F.C. to accept refunding bonds be and the same is hereby Denied. [12]

[Title of District Court and Cause.]

**FINDINGS OF FACT AND CONCLUSIONS OF
LAW ON REHEARING ON POINTS FOR
WHICH CAUSE WAS REMANDED**

This cause came on regularly before the above entitled Court for hearing in respect to the two points upon which the said cause was remanded to the lower court for further findings and clarification by the United States Circuit Court of Appeals for the Ninth District, which said two points are as follows, to-wit:

1. To make specific findings bearing on the question of the maximum amount that the District is reasonably able to pay its bondholders in the circumstances, and

2. To clarify the findings on the question whether the plan of composition provides for deductions from the amount to be paid for coupons which have been voluntarily paid by the irrigation district.

The rehearing was held before the above entitled court, sitting without a jury, a jury having been

waived by the parties, upon the 20th day of April, 1943; H. S. Clewett and [13] Jerome D. Peters, Esquires, appeared as attorneys for the petitioner, and W. Coburn Cook, Esquire, appeared as attorney for the respondent J. R. Mason; evidence both oral and documentary was introduced, and the matter having been submitted for the decision of the Court, and the Court being fully advised in the premises, hereby amends Paragraph VII of the original findings of fact of the above entitled court made herein, which said Paragraph VII as hereby amended, shall from this date read as follows, to-wit:

VII.

That said Paradise Irrigation District is a district located on the Westerly slope and foothills of the Sierra Nevada Mountains in the County of Butte, State of California, and embraces 11,250 acres, of which 30 acres consists of a State Park, and not assessed, and 381 acres are embraced in railroad rights of way and roads. That at present, and for a period of many years last past the average family within *within* the District consists and has consisted of four members and the average monthly income of such a family was and is \$100.00; that the average family within the District expends the following money monthly: \$50.00 for groceries, \$5.00 for fuel and lights, \$20.00 for clothing, \$5.00 doctor and dentist charges, \$15.00 auto expense, leaving \$5.00 for miscellaneous matters, including the payment of State and County and District taxes; that

auto expense of those living within the District is a necessary item of expense, for it is the only means of transportation that those residing within the District have. That the District has shown a gradual decline in the number of mercantile houses doing business within the District; that the population of the District in later years has decreased to the extent that the School Board, which provides school buses for the transportation of students to [14] and from the high school, within the past year has discontinued the use of one high school bus.

That the District was organized in the year 1916; that its water system consists of a storage dam, and the water is served to the parcels of land through the means of pipes; until the replacing of a portion of these pipes lately, all were wooden stave pipes; that from about 1923 on, the water system of the District has become worse and worse so it is necessary to replace it; that a loan was sought of the Reconstruction Finance Corporation of \$140,000.00 to be represented by bonds with which to replace the said water system exclusive of the dam; said bonds were issued; all, however, have not been delivered. That although the loan has been granted, less than fifty per cent of the pipe lines have been replaced and that there is no prospect of replacing the balance for some time for the material cannot be secured under war time regulations and the District had counted on W. P. A. labor which has been discontinued; that if the portion of the pipe line so replaced had not been replaced, no water could have been delivered

through such portions of the District pipe lines after three years time; that there are no wells in the District excepting a few for domestic use, but these are fed by leakage of the District's pipe-lines and are shallow and pump out speedily; also, that if such portion of the District's pipe line as has been replaced had not been replaced, there would be no means of the District with which to meet the composition figure offered the respondent, and to repay the Reconstruction Finance Corporation for the money it expended to purchase the remaining original outstanding bonds of the District; that the labor cost of replacement ran about fifty per cent of the cost, that the maintenance cost is increasing as to the portion of pipe line not replaced; that the District will be able to cope [15] with this for a while, but there will be a time soon when the portion of the pipe line not replaced will be beyond repair unless it is replaced. That before the replacement of a portion of said pipe line there was approximately 67 per cent leakage in the pipe line; this was proportionately reduced by the replacement; that the reservoir of the District leaked from the time it was constructed; that at present it leaks one-third of its capacity or approximately 1000 acre feet per year, it having a capacity of 3000 acre feet; that if the District is to continue in business, within a comparatively short time a new dam must be built, that is a new base placed in front of the old base, and the dam raised.

That as far back as 1925 the respondent Mason expressed doubts and had concern as to the future

of the District; that in repairing the defective pipe lines, either the repairs were made to breaks in the line itself or to the collars by which the different joints of the pipe line were joined together; a complete monthly itemization of these different repairs is found in petitioner's Exhibit "C", which is incorporated in these findings, and made a part hereof.

That the composition was originally initiated in 1934, and from July, 1934, on, the District has levied assessments only for the interest upon the composition figure, instead of upon the full amount of the outstanding bonded indebtedness; that in 1933 and 1934 the delinquencies in the payment of the District assessments each year were in excess of \$13,000; since the reduction in levy for interest as stated above, the greatest delinquency was slightly over \$3,000, all of which appears in petitioner's Exhibit "D", which is incorporated herein, and made a part hereof.

That although the District has levied for only interest on the composition figure since 1934, and then only at the [16] rate of four per cent instead of the six per cent called for by the original bond issues, the general fund showed a deficit as of July 31, 1942, in the sum of \$3,930.44, which is disclosed by petitioner's Exhibit "E", which is incorporated in these findings and made a part hereof.

That as stated hereinbefore in these findings, the District secured a commitment for money from the Reconstruction Finance Corporation for the re-

placement of its pipe lines; of this amount, however, only \$58,000.00 was advanced, and as hereinbefore stated, the work was stopped by reason of the inability of the District to secure materials and also labor; the capital liabilities of the District, being the old bonds and the new bonds representing the said \$58,000.00, is as follows, to-wit:

Bonds of the first issue.....	\$350,000.00
Bonds of the second issue.....	126,000.00
Bonds of the third issue.....	58,000.00

Total	<u>\$534,000.00</u>
-------------	---------------------

That as of 1942-43, there were tax deeded lands to the District in the number of 3,617 acres; in 1930 there were but 381 acres of such tax deeded lands to the District; that the acreage of tax deeded lands to the District commencing with the year 1930 to the year 1942-43, is set forth in petitioner's Exhibit "I", which is incorporated herein, and made a part of these findings.

That the portion of the pipe lines of the District not replaced shows increasing deterioration; that in March, 1942, upon this portion of the pipe line, the District was required to make 844 repairs to the pipe bands, whereas in March, 1943, it was required to make 1869 such repairs, showing that within a year the repairs increased by 1025.

That petitioner has levied for interest upon the com- [17] position figure bonds in the full amount that would be due thereunder from the date that the obligation thereof to the Reconstruction Fi-

nance Corporation commenced; that the total amount to July 1, 1942, which would have become due thereunder was \$51,581.32, which full amount was levied for in the District's assessments, but all that was paid under such levies to July 1, 1942, was the sum of \$40,580.33, as disclosed by the petitioner's Exhibit "F", as to the amount collected for bond interest, which said Exhibit is incorporated herein and made a part of these findings; that although a continuous levy has been made for amounts which would become due for interest and/or principal under the proposed composition bonds of the District, yet to the date of the hearing herein, the collections thereon were deficient in the sum of \$11,000.99.

That upon the assessment roll of the District there are 7,633 acres; 3,206 acres within the District are deeded to the District for delinquent assessments, of which the state has also taken title to 2,030 acres for delinquent state and county taxes. The balance of the 11,250 acres consists of 30 acres of State Park which is not assessed, and 381 acres in railroad rights of way and roads.

Within the District, at the time of the hearing herein and for some time prior thereto there were approximately 1,140 acres of land being irrigated; these acres are improved principally with apples, almonds, olives, walnuts, concord grapes, sweet corn, berries and potatoes, and all require heavy fertilization. In the year 1917, the year that the distribution system of the District was installed, there were approximately 1,000 acres irrigated; be-

tween the years 1917 and 1943 the acreage irrigated for commercial production increased 140 acres.

That there are in addition to the irrigated lands, approximately 1,930 acres which are cleared of timber and underbrush and which at some time in the past have been irrigated, but not for a period of three years or longer; only a portion of these lands could be classed as available for production in the future.

In addition to the foregoing lands, there are approximately 4,585 acres in the District covered with small timber and underbrush; the cost of clearing this land would be from \$125.00 to \$200.00 per acre. That land of far superior fertility in other sections of the state can be purchased for less than the cost of clearing these lands. That about 60 per cent of this land is suitable for homesites, and is sufficient to provide homes for an additional population of 3,000 but at present there is no indication of anything to support an additional population.

In addition to the above mentioned lands there are within the District some 3,200 acres just inside of the boundaries of the District; these are covered with timber and brush, and have no value other than for scenery, and a possibility in the far distant future for timber; these lands have no agricultural value and the value for suitable homesites is obstructed by the expensive cost of extending the water lines; these lands occupy steep rocky canyon walls and deep ravines where the lava cap

has been exposed by erosion, leaving large rough rocks and very little soil on the surface, and are covered by a heavy growth of small timber and underbrush.

That in the year 1941 there was an excess in monies received from products grown within the District over expenditures in producing such products in the sum of \$6,797.02; that, however, in the year 1942, there was a deficit of \$32,821.38 in what producers received from their products [19] grown in the District over the amount for which they sold.

That there are approximately 962 homes in the District; that of these, 32 homes, or $3 \frac{1}{3}$ per cent have a construction value of \$2,600.00 or more; $96 \frac{2}{3}$ per cent of the homes in Paradise are below the standard required by the Federal government in its Federal Housing Administration in the Slum Clearance Plan. That approximately 55 per cent of the homes within the District were constructed at a cost of from \$100.00 to \$600.00. That out of approximately 50 farmers producing commercial crops within the District, only five attempt to make their living solely from their farm operations.

That transportation facilities to and from the District are poor. That a branch of the Southern Pacific Railroad from Chico to Sterling City and which traversed the District has been discontinued, and products transported to outside markets is done so by truck; that there is a railroad through the District, but only a logging railroad; that there has been no passenger or freight service for several years; that since the entry of the United States

into the war, the transportation problem within the District has become serious, and will continue for an indefinite period; that since December 7, 1941, there has been a gradual movement of workers from the District to a place of residence close to their employment. That 235 consumers of gas and electric service within Paradise Irrigation District have discontinued such service since December 7, 1941.

That the future of the District, from the evidence presented to this court, appears not in its development as an agricultural community, but in its development as a community of small holdings for homesites for people of very modest means who make their living by employment outside of the district; that the elevation is too low and the summer [20] temperatures too high for making desirable summer homes for people of means; that the necessary taxation of people of means in the future to meet Federal obligations will limit the number who will be able to support summer homes in addition to permanent homes.

That the rate of assessment which would be required for the year 1942-43, if the plan of composition did not become effected, and if such assessment was levied by the District solely for the original bond service requirements as in respect to the original bond issues, the maintenance and operation expenditure to be provided by water tolls, would be the sum of \$91.06 on each \$100.00 of valuation spread over each acre on the assessment roll, which would average \$38.06 per acre; the assessment

levied for the year 1943 was levied merely for the amounts required under the composition bonds, and under such levy the assessments were \$3.75 on each \$100.00 valuation.

That if it had not been for the Reconstruction Finance Corporation offering to and actually providing the money for the District to effect its composition offer, the District would have continued on with its delinquencies increasing year by year, and by reason of the assessments pyramiding thereby, a time would have come when the income of the District would not have been sufficient to continue the distribution of water, and the District would have been without any funds whatsoever to be used for any purpose.

That in preparation of this hearing the District employed Mr. H. E. Vogel to make a survey of the affairs of the District and report to the Board of Directors. That Mr. H. E. Vogel was a farmer practically all his life; he was in the banking business for many years and was a Director of an irrigation district for over twelve years and as such had [21] experience in the organizing of such district and remained with it until all of the District's bonds were paid in full.

Also he has owned bonds in districts; he was a former member of the California District Securities Commission; he was appointed a member in August, 1931, and continued as a member of the Commission until November, 1940; that from 1934 to 1940 he made investigation of irrigation districts.

which applied to and were operating under Section 11 of the Securities Commission Act, as well as other districts, principally those which were having financial difficulties.

Each of those years his investigations took him to districts all over the State of California, usually from 14 to 18 districts a year which were operating under the moratorium act. For each of the districts he investigated he made a report to the Commission listing the facts as called for in the law, and upon which the Commission could base judgment as to the approval or disapproval of the assessment levied by the district directors for the ensuing year in pursuance of the act.

The testimony of the said H. E. Vogel was admitted as that of an expert witness; he personally came to the District and spent some thirty-four days within the District collecting his data upon which to make his report to the District. The report of said H. E. Vogel was admitted in evidence as petitioner's Exhibit "L", which said report is adopted by this Court as a part of these findings and is incorporated herein and is made a part hereof.

That said plan of composition complies with the provisions of the National Banking Act of the United States and all of the provisions of Public No. 302, enacted by the 75th Congress, approved August 16, 1937. That before the filing of the petition herein, said plan of composition was accepted [22] and approved in writing by and on be-

half of creditors of petitioner owning more than 51 per cent in amount of the securities effected by said plan, excluding however any such securities owned, held, or controlled by the petitioner; that at the time of filing of the petition herein, said plan of composition had been accepted and approved in writing by or on behalf of the owner of more than 92 per cent of the aggregate amount of securities or claims of all classes effected by such plan, excluding however, any securities or claims owned, held, or controlled by the petitioner; that of the \$476,000.00 of indebtedness evidenced by such outstanding bonds of the District, the owner of \$447,000.00 of such securities consented to said plan, and the owners of \$29,000.00 did not consent; that the bonds last mentioned, the owners of which did not consent to said composition plan, are as follows, to-wit:

First Issue, bond numbers

93,

94,

95,

96,

97,

170,

171,

257,

258,

293,

Second Issue, bond numbers

23,	35,	47,
24,	36,	81,
25,	46,	82, [23]
94,	98,	109,
95,	106,	110.
96,	107,	
97,	108,	

That said plan of composition at the time of the filing of the petition herein and now has been accepted in writing by or on behalf of such class of creditors holding more than $\frac{2}{3}$ of the aggregate amount of claims of all classes effected by said plan, and which have been admitted by the petitioner or allowed by the Judge of this court, but excluding claims owned, held, or controlled by the petitioner; that in all respects said plan has been accepted and approved as required by the provisions of Section 83 of Chapter 10 of Public 302, enacted by the 75th Congress and approved August 16, 1937; that all amounts to be paid by the petitioner for services or expenses incidental to the composition have been fully disclosed and are reasonable; that the offer of said plan and its acceptance, as aforesaid, are in good faith; and that the petitioner is authorized by law to take all action necessary to be taken by it to carry out the plan.

That there is hereby added to the original findings of fact heretofore made and entered in the above entitled matter an additional finding which is hereby determined to read as follows, the new finding being Finding No. XII:

XII.

That the District paid to J. R. Mason, respondent, interest on his bonds in December 1936 and January 1937 totaling \$3035.95, whereupon the said J. R. Mason surrendered interest coupons representing the amount paid, which coupons were originally attached to the bonds held by him or his predecessor in interest. [24]

That the Court further finds that the plan of composition herein does not provide for any deduction to be made from the amount payable to any bondholder thereunder on account of interest coupons which may be missing from any bond by reason of the fact that they have been paid by the District and that no deduction shall be made from the amount to be paid to the bondholder J. R. Mason by reason of the payment of said sum of \$3035.95, or by reason of the fact that the coupons which he surrendered to the District as aforesaid are no longer in his possession inasmuch as said coupons are not missing coupons within the meaning of the plan of composition.

CONCLUSIONS OF LAW

The Court hereby amends Paragraph I, of the original Conclusions of Law of this Court to read as follows:

I.

That the plan of composition of the bonded indebtedness of Paradise Irrigation District of Butte County, California, should be approved and confirmed; that the payments to be made in said plan of composition are the full amount which petitioner

is able to pay on its said bonded indebtedness under the circumstances; that said plan of composition as proposed and offered by petitioner is fair, equitable and for the best interest of its creditors and does not discriminate unfairly against any creditor or creditors.

Done in open Court this 24th day of November, 1943.

MARTIN I. WELSH

Judge of the United States District Court, Northern District of the State of California.

• [Endorsed]: Filed Nov. 24, 1943, C. W. Calbreath, Clerk. [25].

In the District Court of the United States for the
Northern District of California,
Northern Division
Federal Court No. 7703

In the Matter of
PARADISE IRRIGATION DISTRICT.

**AMENDMENT TO INTERLOCUTORY
DECREE**

The Interlocutory Decree heretofore entered in the above entitled matter and filed February 3, 1941, is hereby amended by the addition of the following paragraph:

5a. That the true intent and meaning of the plan of composition is that it does not provide for

any deduction to be made from the amount payable to any bondholder thereunder on account of interest coupons which may be missing from any bond by reason of the fact that they have been paid by the District and that no deduction be made from the amount payable to J. R. Mason upon presentation of his bonds and coupons by reason or on account of the payment to him in December 1936 and January 1937 of the sum of \$3035.95, or because the interest coupons which he surrendered when said payment was made are no longer in his possession, these coupons not [26] being missing coupons within the meaning of the plan of composition.

Dated: November 24th, 1943.

MARTIN I. WELSH

Judge of the United States District Court, Northern District of the State of California.

[Endorsed]: Filed Nov. 24, 1943. C. W. Calbreath, Clerk. [27]

[Title of District Court and Cause.]

PRAECIPE FOR SUPPLYING RECORD
TO CIRCUIT COURT

To C. W. Calbreath, Clerk of the Above Entitled Court:

The undersigned, being respectively counsel for petitioner and appellee and for respondent and appellant, hereby request that the original reporter's transcript on the rehearing in the above mat-

ter together with the originals of the Exhibits herein set forth to be sent up, be sent up in lieu of copies, and that the original reporter's transcript be diminished as requested in Subdivision 1 hereunder, all for filing in the Circuit Court of Appeals after rehearing in the above Court upon the matters for which said cause was remanded to said Court by the Circuit Court of Appeals, to-wit:

1. Reporter's transcript, excepting, however, that portion of the testimony of the witness H. E. Vogel wherein he read from the report made by him to the District which is in evidence as Exhibit "L", but particularly including witness's qualifications and work done in preparation of Exhibit "L". [28]

2. Findings of Fact and Conclusions of Law on Rehearing filed November 24, 1943.

3. Amendment to Interlocutory Decree filed November 24, 1943.

4. Minute order June 17, 1943.

5. Minute order March 24, 1943.

6. Minute order October 13 and 14, 1942 (hearing, oral stipulation and order).

7. Amendment to answer filed April 9, 1943.

8. Objection to Motion to Set Aside Oral Stipulation, filed January 30, 1943.

9. Notice of Motion to Set Aside Oral Stipulation.

10. Order filed May 19, 1942.

11. Petitioner's Exhibits A to N inclusive; Respondent's Exhibits A1, A2, and A3.

12. Praecipe.

Dated: January 24, 1944.

H. S. CLEWETT

JEROME D. PETERS

Attorneys for Petitioner and
Appellee

W. COBURN COOK

Attorney for Respondent and
Appellant

It Is So Ordered:

Dated: June 30, 1944.

MARTIN I. WELSH

Judge U. S. District Court.

[Endorsed]: Filed June 30, 1944, C. W. Calbreath, Clerk. [29]

**CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT ON RE-HEARING**

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 29 pages, numbered from 1 to 29, inclusive, contain a full, true and correct transcript of certain records and proceedings in the Matter of Paradise Irrigation District, No. 7703, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the Praeceptum for Supplying Record to Circuit Court, copy of which is embodied herein.

I further certify that the cost of preparing and

certifying the foregoing Record is the sum of Twelve and 05/100 (\$12.05) Dollars, and that the same has been paid to me by the attorney for the appellant herein.

In Witness whereof, I have hereunto set my hand and the official seal of said District Court, this 13th day of July, A.D. 1944.

[Seal]

C. W. CALBREATH

Clerk

By F. M. LAMPERT

Deputy Clerk [30]

In the District Court of the United States for the
Northern District of California, Northern
Division

No. 7703

In the Matter of

PARADISE IRRIGATION DISTRICT.

REPORTER'S TRANSCRIPT

Tuesday, April 20, 1943

Wednesday, April 21, 1943

APPEARANCES:

For the Petitioner Paradise Irrigation District:

JEROME D. PETERS, Esq.

and

H. S. CLEWETT, Esq.

For the Respondent J. R. Mason:

W. COBURN COOK, Esq.

Before: Hon. Martin I. Welsh, Judge.

Tuesday, April 20, 1943

10:00 A.M.

The Clerk: In re Paradise Irrigation District.

Mr. Peters: Ready.

Mr. Cook: Ready, your Honor.

Mr. Peters: If the Court please, prior to the
introduction of evidence I think for clarity's sake a
short outline should be given so we may know defi-

nately the issues to be tried herē. As your Honor is aware, this case was tried in 1939 before the late Judge Louderback; findings made and a judgment interlocutory in effect entered, from which an appeal was taken by the respondent J. R. Mason.

The matter was argued before the Circuit Court of Appeals and was remanded back here for findings upon one issue only, namely, the present maximum ability of the District to pay. Also it was remanded back for a clarification of what the Court meant in its interlocutory judgment by the words "unpaid coupons."

Now we are prepared at this time to prove the maximum ability of the petitioner to pay.

Through the mail there arrived yesterday an answer or an amendment to the answer of the respondent in which, in effect and substantially, he urges that the composition is not fair and equitable because Mr. Mason, the respondent, is refused composition bonds in lieu of his old bonds and is required to accept cash.

Now the reason I said at the outset that it is well to clarify our position here is this: I shall and do move that the answer be stricken from the record. The ground of my motion is this: that this case is now on appeal. The appeal has not been decided. We are here today only to take evidence for the purpose of amending one finding in the many findings of fact of the trial court. Therefore the amendment is not proper and could not be proper because the judgment has been appealed.

from and he cannot amend a pleading upon an appeal before a circuit court.

The Court: Let me ask, who represents the other side?

Mr. Peters: Mr. Coburn Cook, your Honor.

Furthermore, this answer goes to the fairness of the plan. The entire fairness of the plan was not sent back to this Court. The only portion of the fairness of this plan that was sent back to this Court for further findings on is the one issue, namely, the present maximum ability of the District to pay. All the rest of the fairness of the plan is under consideration before the Circuit Court, and therefore if this amendment is allowed the Court will be taking evidence upon an issue upon which the case was not remanded here for further findings.

As a secondary measure, I have always assumed that where a case is at issue, even in the lower court—I mean even in the trial court, that before an amendment can be made it must be made on notice to opposing counsel and leave of Court obtained to make the amendment.

Now, as I say, I received this yesterday afternoon when I returned to my office. And at this time I move that it be stricken from the files because it will only complicate the hearing, as this matter is not before the Court at this time.

Mr. Cook: Now, if your Honor please, I had desired to make a motion myself, and I suppose I may as well reply to counsel and make my motion at the same time, because it really somewhat pertains to the same point.

This case, as was said, was tried by Judge Louderback and went to the Circuit Court of Appeals. It is a municipal bankruptcy case involving this irrigation district in which their plan offers 52 cents—five hundred twenty some dollars for a thousand dollar bond, and Judge Louderback decided that the plan was fair and overruled all our objections, and the case went to the Circuit Court of Appeals where the Court had already heard the District Irrigation case and remanded that case to the District Court and has written an opinion and had disposed of all the points except the fairness of the plan and the ability of the District to pay. When this case came up for argument before the Circuit Court of Appeals the Court did not hear argument and remanded this case back to the trial court for the clarification of the findings on the fairness of the plan and also for determination as to whether or not the plan should be interpreted to provide—well, the specific facts were that Mr. Mason between the first bankruptcy act and the second bankruptcy act had some actions pending against the District and they had voluntarily paid him about \$3000.00 on his interest coupons, so the question came up as to whether or not the plan required that there should be a deduction of the amount to be paid him because of this payment on the coupons, the plan using the words “that missing on paid coupons”—perhaps I haven’t got the exact language, but that was the sense of it, as to whether or not the plan meant that there should be deduction for coupons that were missing when they had actually been paid and therefore they weren’t missing.

at all, they were merely on paid coupons that should be missing, the thought being that if a bondholder turns in a bond and doesn't have a certain amount of coupons and someone else has them or they are mislaid or something like that and then afterwards they turn up, whoever holds those coupons would be entitled to consideration for the coupons. In this case the coupons are not on paid missing coupons, they were actually paid, the District has them, and therefore they could never show up in anybody's hands.

So the question was as to whether or not the plan required that there should be a deduction of the amount to be paid in because of this payment.

That was the same point that was raised in the Vista Irrigation case which your Honor will recall we had a hearing on here.

(Argument in opposition to motion to strike amended answer from files.)

That is the answer to Counsel's motion that we strike this answer.

And in connection with that matter I wish to make a motion now, which is this: I move that the plan be amended to provide that both Mr. Mason and the R.F.C. be permitted to take refunding bonds in exchange for their old bonds, and I wish to state this: that if the plan is so amended to allow Mr. Mason to take refunding bonds with the same amount of interest as the R.F.C. is entitled to—and in that connection, they have been receiving interest at 4 per cent. on their claim, which will be the

amount of the refunding bonds, from approximately January first, I think it is, 1934; and therefore I move that the plan be amended to allow both creditors to have these refunding bonds with interest on the refunding bonds from that time. And if the plan is so amended, Mr. Mason will accept the composition. If the Court should grant this motion now for the amendment of the plan there would be no necessity to take further evidence. Mr. Mason would accept this plan of composition.

(Argument by respective counsel on the motion to amend plan of composition and the motion to strike answer from the files.)

The Court: Both motions submitted?

Mr. Peters: Yes, your Honor.

Mr. Cook: Yes, your Honor.

The Court: Let both motions be submitted on briefs.

[Endorsed]: Filed Jan. 26, 1944.

[Endorsed]: No. 9925. United States Circuit Court of Appeals for the Ninth Circuit. J. R. Mason, Appellant, vs. Paradise Irrigation District, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division.

Filed July 17, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit

United States Circuit Court of Appeals
for the Ninth Circuit

No. 9925

J. R. MASON,

Appellant,

v.

PARADISE IRRIGATION DISTRICT,

Appellee.

DESIGNATION OF SUPPLEMENTAL
TRANSCRIPT OF RECORD

The appellant designates as those parts of the record to be printed as a supplemental transcript of record after the hearing in the District Court upon the remand of this cause, the following:

1. The entire supplemental record upon the hearing in the District Court upon the remand of the cause and which has been filed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, except

(a) The exhibits

(b) The reporter's transcript, except that there is designated for printing pages 1, 3, 4, 5, 6 and lines 1 to 25 on page 7 of said reporter's transcript.

Dated: September 6, 1944:

W. COBURN COOK

Attorney for Appellant

[Endorsed]: Filed Sept. 8, 1944. Paul P.
O'Brien, Clerk.

No. 9925

IN THE

**United States Circuit Court of Appeals
For the Ninth Circuit**

J. R. MASON,

Appellant,

vs.

PARADISE IRRIGATION DISTRICT,

Appellee:

**Upon Appeal from the District Court of the United States
for the Northern District of California,
Northern Division**

**PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT**

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpts from Proceedings of Monday, March 26,
1945.

Before: Garrecht, Mathews and Healy,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Pursuant to request of counsel for respective parties, Ordered appeal herein submitted on briefs on file to Garrecht, Mathews and Stephens, Circuit Judges, for consideration and decision.

United States Circuit Court of Appeals
of the Ninth Circuit

Excerpts from Proceedings of Friday, May 11,
1945.

Before: Garrecht, Mathews and Stephens,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION
AND FILING AND RECORDING OF
DECREE

By direction of the Court, Ordered that the type-written opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that

a decree be filed and recorded in the minutes of this Court in accordance with the opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

OPINION

Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division

Before: Garrecht, Mathews and Stephens,
Circuit Judges.

Stephens, Circuit Judge.

This appeal is by a bondholder from an interlocutory decree approving a reorganization plan of a California irrigation district organized under the California Irrigation District Act of 1897 (Cal. Stat. 1897, p. 254).

But two points are presented.

Firstly, it is contended that the bondholder has not been treated fairly or equally in the reorganization plan inasmuch as other creditors may be awarded 4% refunding bonds while he must take cash for the bonds he is required to surrender. Appellant admits that this court has held contrary to contention in *West Coast Life Ins. Co. v. Merced Irr. Dist.*, 114 Fed. 2d 654 (C.C.A. 9, 1940), and *Lorber v. Vista Irr. Dist.*, 127 Fed. 2d 628, 143 Fed. 2d 282 (C.C.A. 9, 1944). The contends that the Fifth Circuit has decided otherwise in *State of Texas v.*

Tobasco Consolidated School Dist., 132 Fed. 2d 62, 133 Fed. 2d 196, 142 Fed. 2d 58 (C.C.A. 5, 1944). We adhere to our viewpoint as expressed in this court's decisions as cited.

Secondly, it is submitted that the trial court erred in granting a motion by appellee to set aside a stipulation theretofore made by the parties and accepted by the court. The only part of the stipulation in issue is that part which provided that appellant should be awarded \$1000 costs and expenses on the appeal. Stipulations of this nature are subject to the discretion of the trial court and can be attacked only upon the showing that such discretion was abused and that the court's ruling is inequitable. No inequitable circumstance is asserted by appellant.

Affirmed.

[Endorsed]: Opinion. Filed May 11, 1945. Paul O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 9925

J. R. MASON,

Appellant,

vs.

PARADISE IRRIGATION DISTRICT,

Appellee.

DECREE

Appeal from the District Court of the United States for the Northern District of California, Northern Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Northern District of California, Northern Division, and was duly submitted:

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the the decree of the said District Court in this cause be, and hereby is, affirmed with costs in favor of the appellee and against the appellant.

It Is Further Ordered, Adjudged, and Decreed by this Court, that the appellee recover against the appellant for its costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered May 11, 1945.
Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

**CERTIFICATE OF CLERK, U. S. CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT, TO RECORD CERTIFIED UN-
DER RULE 38 OF THE REVISED RULES
OF THE SUPREME COURT OF THE
UNITED STATES**

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two hundred seventeen (217) pages, numbered from and including 1 to and including 217, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of appellant in propria persona, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 11th day of July, 1945.

[Seal]

PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 8, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted, limited to the question whether any applicable rule requiring equality of treatment among creditors was violated by the difference between the treatment accorded the petitioner and that accorded the Reconstruction Finance Corporation under the approved plan. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson and Mr. Justice Burton took no part in the consideration or decision of this application.

(1185)